

Enforcement of China's new Foreign Investment Law

Due to the rapidly evolving regulatory regime for foreign investment in China, foreign investors need to keep abreast of changes and the impact these changes may have on their investments.

As covered in [our previous explainer](#), earlier this year China passed a new Foreign Investment Law (FIL) to further attract investment, address international criticism about openness, and level the playing field between foreign and domestic investors.

The FIL comes into effect on January 1, 2020, and it replaces previous laws governing different types of foreign-invested enterprises (FIE) in China.

Foreign investments will be managed in a system based on the principle of national treatment, with a revised negative list, an updated reporting system, and a national security review.

National principle of equal treatment

The principle of national treatment, or more precisely "pre-establishment national treatment" (准入前国民待遇), was first circulated in the 2015 Draft Law.

With the exception of areas identified on the negative list, the FIL stipulates (Article 4) that foreign investors and their investments will receive the same market access and with no less favourable conditions than domestic investors.

This also means that FIEs will no longer be subject to additional conditions, nor will they have a separate process to domestic enterprises when it comes to the application for licences and certification.

Negative lists

There are two "negative lists", and one "encouraged catalogue", that foreign investors should refer to when making investment in China.

The first negative list (Special Administrative Measures for Foreign Investment Market Access) specifies the industries and sectors where foreign investment is prohibited or restricted nationwide.

The second negative list (Special Administrative Measures for Foreign Investment Market Access in Pilot Free Trade Zones) is in relation to foreign investment in China's twelve – soon to be eighteen – pilot free trade zones (FTZ).

Investment does not require prior government approval when it is made in an area outside of those identified on the negative list.

Prior to the introduction of a negative list, a "positive list" was used to control foreign investment, but over the years China has shifted to specifying restricted rather than permissible areas of investment.

The negative list has been updated several times since its inception for Shanghai's FTZ in 2013, and its most recent update in 2019 provides even greater market access for foreign investment.

Reporting system

Currently, separate reporting platforms exist for FIEs and Chinese enterprises.

This reporting regime requires FIEs to submit information to a platform managed by the Ministry of Commerce (MOC), which then discloses certain company information to the general public, such as annual reports and legal proceedings.

Chinese enterprises report to a separate platform previously managed by the State Administration for Industry and Commerce (SAIC), but which was merged into the newly formed State Administration for Market Regulation (SAMR) in 2018.

It is still not clear whether foreign and domestic enterprises will share the same reporting platform after the FIL comes into force.



However, the FIL stipulates (Article 30) that authorities will be required to use the same standards for both foreign and domestic invested enterprises in relation to applications and approvals.

Furthermore, once the required information has been submitted and approved by the relevant authorities, FIEs will no longer be required to submit additional or duplicate sets of documents (Article 34).

National security review

Finally, the FIL shows (Article 35) that foreign investments may be subject to a national security review.

The FIL does not provide detail regarding the specifics and procedures of a national security review, nor is it mentioned in the draft of the law's implementation guidelines released earlier this month. What's clear, however, is that a review will take place when foreign investment is deemed to affect national security, and any decisions made by the authorities are final.

Contact Us

For more details or to discuss how to prepare your business for the new FIL, please contact one of our ShineWing Australia experts listed.



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